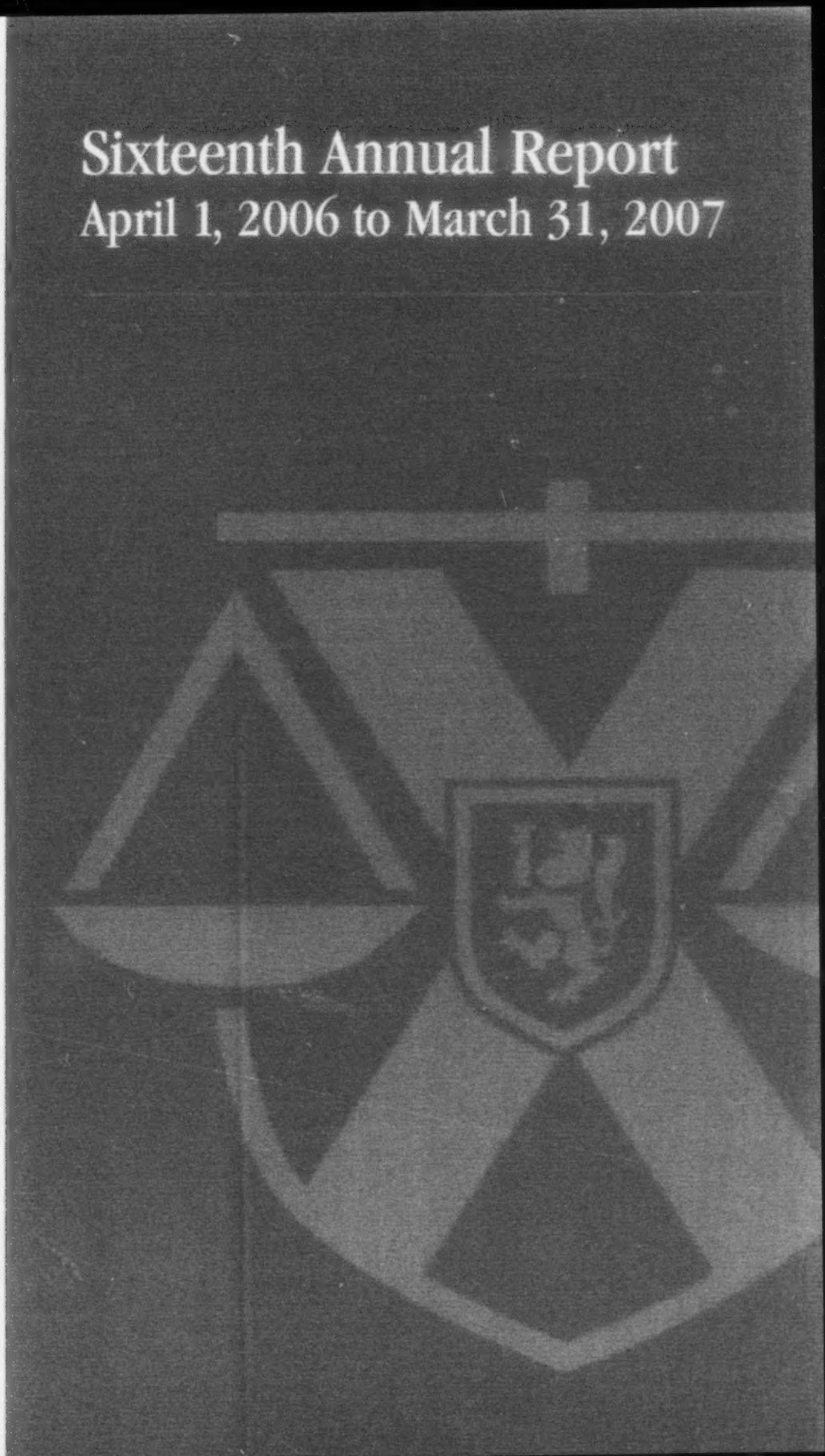
LAW REFORM
COMMISSION
OF
NOVA SCOTIA

Sixteenth Annual Report
April 1, 2006 to March 31, 2007



LAW REFORM
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OF
NOVA SCOTIA

SIXTEENTH ANNUAL REPORT

April 1, 2006 to March 31, 2007

The Law Reform Commission of Nova Scotia was established by the Government of Nova Scotia under the *Law Reform Commission Act*, S.N.S. 1990, c.17. It began operation in 1991.

The Commissioners for 2006-2007:

Anthony R. Chapman, President
Thomas A. Cromwell
Keith R. Evans
Diana Ginn
Darlene Jamieson
John L. McMullan
E. Arleen Paris

The Commission staff in 2006-2007:

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The Commission gratefully acknowledges this financial support.

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A. OVERVIEW OF THE LAW REFORM COMMISSION

The Law Reform Commission of Nova Scotia was created by the Government of Nova Scotia under the *Law Reform Commission Act*.[1] The Commission consists of between five and seven Commissioners (there are currently six), an Executive Director and legal research and administrative staff. The Commission reports to the public and the elected representatives of Nova Scotia through the Attorney General of Nova Scotia. It is not, however, a government department, but an independent advisor to government. The Commissioners, whose appointment process is set out in the *Act*, currently serve part-time and come from different sectors of the community. One Commissioner is a judge appointed by the Governor in Council (provincial Cabinet) after consultation with the Chief Justice of Nova Scotia and the chief judge of the court of which the judge is a member; two are community representatives appointed by Cabinet; two are appointed by the Council of the Nova Scotia Barristers' Society; and one person represents the full-time members of the Faculty of Law, Dalhousie University. One of the Commissioners must not be a graduate in law.

Mandate

The Commission's job is to review Nova Scotia law and to make recommendations for its improvement, modernization and reform. This may involve formulating new ideas and approaches to law, or proposing ways in which existing laws and the legal system can be made clearer or simpler to better serve the needs of the province. The Commission may choose a topic for law reform based upon suggestions received from government, lawyers, judges, or the community. A project may also follow a government request, generally known as a reference. Since 1991, the Commission has received five references from the Government. The references related respectively to the administrative justice system, the probate system, mental health provisions of the *Hospitals Act*, adoption information law,[2] and grandparent-grandchild access.

The Commission does not make law in Nova Scotia; that task is performed in part by the elected Members of the House of Assembly. The Commission's reports and recommendations are, however, formally presented to the Attorney General and may result in changes to the law. Law is also made through the decisions of judges and appointed administrative decision-makers in cases that come before them.

A distinguishing characteristic of the Commission is its independence from government. Although in the past the Commission received a significant portion of funding from government, on average about one third of its money came from other sources. Government has a role in Commissioner selection, but does not choose all of the Commissioners, and no Commissioner is chosen to represent the

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1 S.N.S. 1990, c.17, reproduced at **Appendix A**.

2 Reports on the administrative justice, probate, *Hospitals Act*, and grandparent-grandchild access projects have been completed (the last of those four reports was published in April 2007, after the end of the current reporting period). Following completion of background research, work on adoption information law was suspended after news in 2000 of the loss of government funding. The project was subsequently referred to a committee formed by the Minister of Community Services.

Government. The Commission does undertake government requests for law reform projects, as far as is feasible, but apart from that requirement, is free to select the work it undertakes. So long as done in compliance with its object and powers under the *Act*, the Commission enjoys a free hand in terms of its activities: it may conduct meetings, hire people, perform research, publish reports, enter into cooperative arrangements with other entities, and decide how its funds are to be spent.

Law Reform Process

The Commission usually prepares two publications during the course of a project. The first publication, the ***Discussion Paper***, sets out the Commission's preliminary suggestions for reform. The purpose of the Discussion Paper is to encourage people to consider and comment on the Commission's preliminary suggestions, as well as any issues, principles, and assumptions identified as having influenced the Commission's proposals for reform.

As part of the preparations for a Discussion Paper, the Commission generally forms an ***Advisory Group***. The Advisory Group usually consists of Commission legal staff, and a number of community members, including government representatives, the judiciary, lawyers and other professionals, as well as participants from groups with interest or expertise in the topic being studied. The Group meets to identify and discuss relevant issues, as well as to propose to the Commission what should be included in a Discussion Paper.

The second publication is a ***Final Report,*** which is submitted to the Attorney General, and which is widely distributed. It contains the final recommendations of the Commission and, in some cases, a draft law. The Commission makes its final recommendations after it takes into account the responses it receives to the Discussion Paper. A Final Report is intended to provide a basis for the Government to consider and adopt the recommended reforms. The process adopted by the Commission, of seeking expert advice, consulting widely, synthesizing feedback, deliberating and report writing, is a time-consuming one. It is a process, however, which is designed to give greater weight and credibility to the final recommendations which result. The Commission does not engage in active advocacy regarding implementation of its recommendations beyond providing the recommendations to the Government and members of the public. The Commission has produced 37 project reports and 15 annual reports, which are listed at **Appendix C**. [All reports can be downloaded without cost from the Commission's website.]

Effects of Law Reform Work

Recommendations in Commission Final Reports have been brought into effect in a number of ways. Most recently, the Nova Scotia Government introduced new legislation to reform the *Wills Act* (SNS 2006, c.49 thereby implementing many of the recommendations in the Commission's November, 2003 Final Report on reform of the *Wills Act*. In addition, the Nova Scotia Government recently introduced *Involuntary Psychiatric Treatment Act* (SNS 2005 c.42) thus implementing many of the recommendations in the Commission's February 2002 Final Report on the Mental Health Provisions of the *Hospitals Act*. In 2004, the Government also amended the *Mechanics' Lien Act*, based upon the recommendations in the Commission's 2003 Final Report, *Builders' Liens in Nova Scotia: Reform of the Mechanics' Lien Act* . The influence of the Commission's work, however, goes beyond legislation. Certain Final Report recommendations have been implemented through government policies or protocols. Commission reports have also served an important educational function and have been used as course materials in high schools and at post-secondary institutions. Government, public interest groups, and other organizations have relied on Commission reports in order to develop awareness of issues and to focus discussions among interested people. For instance, *Law Reform Agencies*, a 2004 publication of the International Cooperation Group of the Federal Department of Justice, reflected the influence of Commission reports.

The contents of Commission reports have been referred to by a number of courts, including the Supreme Court of Canada, as part of their published case decisions. Judges have mentioned Commission reports in a number of contexts, including interim payment of damages, matrimonial property, administrative law, the jury system, powers of attorney and the legal status of the child born outside of marriage.

Nova Scotia House of Assembly members from the Liberal, New Democratic, and Progressive Conservative parties have referred with approval to Commission reports or to Commission work generally, during the course of legislative debates.

Most of the Commission's time is spent choosing, discussing, and researching law reform subjects, followed by report writing and communicating the conclusions reached. Another significant role of Commission staff is responding to inquiries about the law or about aspects of the Commission's work. The Commission does not provide legal advice, nor does it intervene in individual cases. Nonetheless, Commission staff continue to respond to inquiries by telephone, by fax, by letter, by e-mail, or in person. In replying to inquiries, Commission staff have provided legal information, copies of Commission reports as well as other documents, and contact details for government departments and other relevant institutions.

Funding

The Commission is currently funded jointly (approximately 50% each) by the Nova Scotia Department of Justice and the Law Foundation of Nova Scotia. The Law Foundation, which funds work relating to the law, legal education, and the administration of justice, obtains its funds from the interest on lawyers' general trust accounts. The Law Foundation's objectives specifically include law reform.[3]

[3] *Legal Profession Act*, S.N.S. 2004, c. 28, s. 73.

B. THE YEAR IN REVIEW 2006-2007

Work Program and Publications:

- **Civil Procedure Rules Revision Project**

The work of the Rules Revision Project remained the Commission's principal pre-occupation throughout the past year. In the Commission's previous annual report, it was anticipated that this project would be completed in the Spring of 2007. It is now estimated that the project will not be completed before the end of the current calendar year. The bulk of the work on this project in the past year has been, and remains, drafting. This is a very labour intensive exercise, which has engaged the full time attention of a Nova Scotia Supreme Court Judge and a Senior Solicitor who is on secondment from the Department of Justice. The Commission has provided continuous research and related support to the principal Drafters and the Rules Revision Project Steering Committee.

In light of the scope and inherent difficulties of a project of this nature, it is clear that it has proceeded on both a cost beneficial and expeditious basis. The objective of this project is to produce new rules which will contribute to an amelioration of the costs, delays, and complexity, which increasingly affect all civil justice systems in Canada. The Commission is confident that this project will contribute to a reduction in the barriers to access to justice in Nova Scotia.

- **Vexatious Litigants**

In the beginning of this reporting period, in April 2006, the Commission issued its Final Report on *Vexatious Litigants*.

Vexatious litigants are people who persistently engage in legal proceedings, without having a valid claim to be heard by the courts. Vexatious litigants can waste the time of judges and administrative staff and prevent other, legitimate claims from being dealt with. They can also force other people to incur otherwise unnecessary legal bills, by having to defend themselves against meritless claims. Vexatious litigants can therefore pose a serious problem for Nova Scotia's civil justice system. It is clear that a small number of people can tie up a large amount of resources and cause a great deal of disruption by making groundless claims.

Vexatious litigants pose challenges to judicial systems across the country. Legislation or court rules meant to control vexatious litigants are in place respectively in 7 other provinces, as well as in the Supreme Court of Canada and the Federal Courts of Canada. Access to justice is a fundamental right in our society. Unfortunately, vexatious litigants can abuse that right, by repeatedly bringing to court claims which have no merit. To help ensure access to the courts for all, as well as to prevent the abuse of the courts' process and the waste of time and money, the Law Reform Commission suggests the adoption of a vexatious litigants statute in Nova Scotia.

The proposed statute would explicitly empower the courts to make an order against a vexatious litigant. The order would prevent a vexatious litigant from starting any new proceedings or continuing with an existing proceeding until court leave was granted to lift the order. A balanced approach would be used, one which empowers the courts to deal effectively with vexatious litigants, but which also permits someone subject to a court order to seek court leave to have the order lifted when circumstances change.

Among other proposals, the Commission's Final Report also recommends:

- The vexatious litigants statute should apply to all Nova Scotian courts with civil jurisdiction.
- Rather than attempting to define the term "vexatious" or to use a substitute, the vexatious litigants statute should include a non-exclusive list of factors which could help to guide the court.
- A vexatious litigants statute should require notice to be provided to the Nova Scotia Attorney General of an application for a vexatious litigants order. The Attorney General would be entitled to appear at the hearing of the application. The statute should make it clear that unless applying for a vexatious litigants order, the Attorney General's role would not be a partisan one.
- One should be able to appeal a vexatious litigants order. One should not, however, be able to appeal an unsuccessful leave application to have a vexatious litigants order lifted.
- Courts should be given an express rule-making power to determine how a leave application should take place, including any limits on the frequency of such applications.
- A vexatious litigants statute should specifically and clearly permit courts to deal with both new and continuing proceedings.
- The language used in a vexatious litigants statute should include vexatious spokespersons or agents.

▸ Grandparents-Grandchildren: Access

The Commission was asked to undertake a project focused on the issue of grandparent's access to grandchildren, and any recommendations for law reform. This project was referred to the Commission by the Attorney General in January 2006. Following preliminary research, a project Advisory Group was established which first met in June 2006. A Discussion Paper was subsequently developed in the fall of 2006, forwarded to the printers in December, and distributed in January 2007.

Family law issues, particularly as they relate to custody of, and access to, children, are especially difficult. This is no less so when dealing with the issue of access between grandparents and grandchildren. Fortunately, in most cases, arrangements relating to the custody and access of children, including access by grandparents and others, are settled without recourse to litigation and the courts. The cases that do come before the courts, therefore, represent a very small percentage of the overall number of family law cases.

Legislation in all Canadian jurisdictions allows grandparents to apply for custody of, or access to, their grandchildren. There is no jurisdiction in Canada, however, which provides to grandparents automatic access as of right, which is usually referred to as a "presumptive right of access."

In Nova Scotia, section 18(2) of the *Maintenance and Custody Act* provides that a parent or guardian or "other person with leave of the court" may apply for custody of or access to a child. Although there is no explicit reference to grandparents, this provision has been used by them to obtain access to their grandchildren. In Nova Scotia, an applicant must therefore first obtain the leave or permission of the court in order to bring an application. Such leave, although sometimes denied, has been granted by the Nova Scotia courts in appropriate circumstances.

Legislative provisions in all jurisdictions in Canada also mandate that courts, when deciding upon an access application, must do so on the basis of the child's "best interests." These interests are to be paramount in reaching any decision. The "best interests of the child" standard requires each case to be assessed on the basis of its own merits, as determined by careful consideration of the particular facts presented by the case.

The Commission is of the view that existing Nova Scotian legislation, when seen through the lens of the best interests of the child, currently strikes the right balance. As a result, the Commission is not in favour of creating an automatic right of access on the part of anyone, including grandparents.

The Commission, however, is of the view that there is an opportunity for reform in the area of grandparent-grandchildren access and sought public commentary to assist in developing recommendations for reform. In particular, the Commission invited comments on the following preliminary proposals in the Discussion Paper:

- The *Maintenance and Custody Act* should be amended, to provide a "best interests of the child" list of factors to be considered in deciding access cases.
- The *Maintenance and Custody Act* should be amended, to identify explicitly grandparents as a potential category of applicant.
- The leave provision in the *Maintenance and Custody Act* should be retained.

Following the publication of the Discussion Paper, the Commission received and considered submissions, conducted further research, and prepared a draft Final Report in March 2007, which was not approved for publication until after the reporting period.

Work in Progress

Rules Revision Project

The Civil Procedure Rules Revision Project will continue to be the Commission's priority project until its completion, which is now estimated to be by the end of the current fiscal year. This project has been an important and very engaging project for the Commission, and we are pleased to have had the opportunity to make a contribution to its successful progress.

Small Claims Court Project

Preliminary work on this collaborative project with Saint Mary's University began in the fall of 2005. There are several reasons why the Commission decided to undertake a project which would examine the workings of the Small Claims Court. The Court was established over 25 years ago to provide Nova Scotians with a means to have their disputes resolved quickly, cheaply, and informally without the need of a lawyer. Today, the larger civil justice system, in all Canadian jurisdictions, has become increasingly inaccessible because of exorbitant costs, delays, and complexity. The Commission was of the view that in light of the problems afflicting the civil justice system at large it would be helpful to examine how well the Small Claims Court is meeting its original objectives. Also, it was felt that the system at large might usefully learn, and possibly adopt, something from the workings of the Small Claims Court. Finally, the Commission believes that the project will generate some empirical socio-legal data and thereby contribute to a better understanding of how the justice system actually works.

During the past fiscal year, the first stage of this project was initiated and completed. This phase consisted of a series of structured interviews with Small Claims Court adjudicators, court administrators, and lawyers who appear in the Small Claims Court.

The second stage of this project will consist of a questionnaire survey of Small Claims Court users, both plaintiffs and defendants. The results of the structured interviews undertaken during the first phase of the project have helped inform the development of the questionnaire, which was very actively being developed before the end of the reporting period. As noted, this is a collaborative project with Saint Mary's University, which has generously provided financial support for research assistants, as well as ongoing faculty support and supervision.

This project has also involved discussions with, and the cooperation of, the Department of Justice, which has provided statistical data and other information. The Commission believes that this project is particularly timely in light of the recent increase in the financial jurisdiction of the Small Claims Court to $25,000.

▸ Contaminated Sites Project

In January 2007, the Commission initiated discussions with the Department of the Environment & Labour regarding a potential project focused on environmental issues. Through these discussions it was determined that a priority project of interest to the Department ought to focus on contaminated sites in Nova Scotia. These sites are often referred to as "brownfields" and are generally underutilized, if not idle or abandoned properties. The failure to clean up or remediate such sites can have economic, social and health consequences of considerable significance to Nova Scotians.

At the end of the reporting period, the Commission and the Department of the Environment & Labour were actively developing the Terms of Reference for a Commission project on contaminated sites. It is anticipated that the primary focus of this project will be on the issue of legal liability and a host of related issues. This is a complicated area of law and public policy which at present is characterized by considerable uncertainty in Nova Scotia and elsewhere in Canada.

External Activities and Relations

The Commission and its staff consider it particularly important to maintain close liaison with the practicing bar, the judiciary, the legal academic community, the Government, our Saint Mary's University partners, and others.

In March 2007 the Canadian Bar Association-Nova Scotia Branch announced that the CBA's Law Day Award would be given to the Law Reform Commission of Nova Scotia. The award citation noted, among other things, the Law Reform Commission's significant contribution in promoting public legal education in Nova Scotia. Historically, the Canadian Bar Association has been a very strong supporter of the establishment and maintenance of independent law reform agencies throughout Canada. The Commission was very appreciative of the recognition bestowed upon it by the Canadian Bar Association.

Commission staff have attended and participated in a number of external meetings and conferences during the past year in addition to many less formal activities. In particular the Commission's Executive Director participated in the Annual Meetings of:

- the Nova Scotia Barristers' Society
- the Federation of Law Reform Agencies of Canada
- the Uniform Law Conference of Canada

In addition the Executive Director attended various meetings and events hosted by such organizations as the Legal Information Society of Nova Scotia, the Canadian Bar Association - Nova Scotia Branch, the Nova Scotia Barristers' Society, and the Canadian Centre for Ethics in Public Affairs.

The Executive Director was an invited participant at the "Into the Future: The Agenda for Civil Justice Reform - Part I" conference in Montreal in May 2006, and the "Into the Future - Part II" conference in Toronto in December 2006. The Executive Director was also an invited speaker at the Annual Meeting of the Association of Canadian Court Administrators, and a presenter at a symposium in Toronto hosted by the Attorney General of Ontario on the newly established Law Commission of Ontario.

During the past year, the Executive Director met with, amongst others, the Attorney General and Deputy Attorney General of Nova Scotia, the Attorney General and Deputy Attorney General of Ontario, the President and Executive Director of the Nova Scotia Barristers' Society, the President of the Canadian Bar Association-Nova Scotia Branch, the Director of the British Columbia Law Institute, and the Director of the Alberta Law Reform Institute.

The Commission continues to maintain and strengthen its relations with sister law reform agencies and other participants in the justice system. During the reporting period, the Executive Director, in his capacity as President of the Federation of Law Reform Agencies of Canada, completed preliminary planning for an Atlantic Symposium scheduled to be held in Nova Scotia in June 2007 with participation from Federation member agencies across Canada. This symposium is a result of the generous financial support of the Alberta Law Reform Institute.

During the reporting period Commission work was mentioned in various regional news media as well as The Lawyers Weekly, the Canadian Bar Association and Nova Scotia Barristers' Society publications, other law reform agencies' reports, and Hansard.

The Commission's website continues to maintain an open invitation to the public for project suggestions and new ideas for law reform. As well, the Nova Scotia Courts website links to that of the Law Reform Commission for interaction concerning the Rules Revision Project.

Internal Administration and Organization

The Commission currently has six Commissioners.

In October, 2006 Mr. Keith Evans resigned as a Commissioner, having made a significant contribution to the work of the Commission since his appointment in 2002.

John E.S. Briggs continued to serve as Executive Director and General Counsel and William Laurence as Legal Research Counsel. The Commission's Administrative Assistant is Krista Tinslay, who joined the Commission in April of 2006.

The Commission was particularly fortunate this year to continue to have the benefit of the services of Professor William H. Charles, Q.C. as Special Counsel to the Commission. Professor Charles has provided especially valuable assistance with respect to all of the Commission projects during the past year.

Funding & Finances

From the establishment of the Commission in 1991 until 2001, the Commission received on average two thirds of its funding from the Government of Nova Scotia, and the remaining one third from the Law Foundation of Nova Scotia. At the time of its establishment, it had been purposely decided in discussions between the Government and the Law Foundation that the Commission would be funded equally by both. It was believed that with this funding arrangement the Commission would be, and would be seen to be, more independent than if it received all of its funding from Government. The original (1991) Commission budget was $300,000 (now $406,650, based on the Bank of Canada inflation calculator) of which it was expected that the Law Foundation and Government would each provide half of the required core funding.

During the fiscal years 2001 until March 31, 2004 all of the Commission funding was provided by the Law Foundation of Nova Scotia. Since that time, until the present, the Commission has been funded approximately equally by the Law Foundation and the Government of Nova Scotia.

During the reporting period, the Commission received core funding in the amount of $140,308 from the Law Foundation, and $150,000 from the Department of Justice. In addition, the Government provided the Commission with $14,000 in supplementary funding in support of our various projects.

The Commission's financial statement for the year ending 31 March 2007 is attached to this report as **Appendix B**.

The Commission continued to operate during the current fiscal year within its available resources. The year began with a surplus of $5,242, which at year end after factoring in accrued project funding of $24,250, stands at $5,586.

C. THE RELEVANCE OF THE LAW REFORM COMMISSION

The Law Reform Commission is mandated to make recommendations for the improvement of Nova Scotia laws. This is a responsibility that cannot be casually undertaken. It requires careful and often extensive research, consultation with the bench, the bar, interested parties, persons with relevant expertise, and members of the public - all followed by thoughtful deliberation. These activities are necessarily time consuming. The relevance of Law Reform Commission activities are, perhaps most easily measured by tracking the Commission's success in having its recommendations enacted into law.

In this regard, the Commission is pleased to note that, for example during the past year the Government enacted reforms to the *Wills Act*, based upon recommendations contained in the Commission's 2003 Final Report entitled *Reform of the Nova Scotia Wills Act*. Further, the Government recently introduced the *Involuntary Psychiatric Treatment Act* (S.N.S. 2005 c.42), thus implementing many of the recommendations from the Commission's Final Report on the *Mental Health Provisions of the Hospitals Act*. The Commission has also been encouraged to believe that the Government will likely act upon the recommendations contained in the Commission's Final Report on *Vexatious Litigants*, released in April 2006. These legislative reforms and proposals for reform have relevance, in varying degrees, to a great many Nova Scotians.

Although the Commission has been particularly gratified at the number of its recommendations for reform which have, in fact, been enacted into law in recent years, it believes there are other important measures of its relevance to Nova Scotians. Public legal education, for example, has been, and continues to be an important aspect of the Commission's activities. It is for that reason that the Commission is especially grateful to have been recognized by the Canadian Bar Association-Nova Scotia Branch as the recipient of this year's Law Day Award for its significant efforts in promoting public legal education in Nova Scotia.

The Commission continues to believe that its work provides a relevant and valuable contribution to law reform efforts in Nova Scotia.

In summary, the 2006-2007 fiscal year was a positive one in which the Commission continued to make a critical contribution to the work of the Civil Procedures Rules Revision Project. In addition, the Commission completed or initiated several other projects whilst enhancing our support in the community. Notwithstanding ongoing financial uncertainty, we enter the fiscal year 2007-08 with continuing optimism and enthusiasm for our work.

D. COMMISSIONERS AND STAFF

Commissioners

Anthony L. Chapman, President
Commissioner (2004 -)
Mr. Chapman was appointed to the Commission by the Council of the Nova Scotia Barristers' Society in June 2004. He has been a member of the Nova Scotia Bar since 1980. A partner in the Halifax office of the law firm Cox & Palmer, Mr. Chapman specializes in corporate/commercial law, real property law, secured transactions, and environmental law. Mr. Chapman was appointed President in 2007.

Thomas A. Cromwell
Commissioner (2002 -)
Mr. Cromwell was appointed to the Commission in March 2002. Mr. Cromwell was called to the Ontario Bar in 1979 and to the Nova Scotia Bar in 1984. In 1997, he was appointed to the Court of Appeal of Nova Scotia. Prior to his judicial appointment, he practiced law in Ontario and taught at the faculties of law at both Queen's and Dalhousie Universities.

Keith R. Evans
Commissioner (2002 - 2006)
Mr. Evans was appointed to the Commission in January 2002. His extensive professional background includes work as a legal academic and practicing lawyer, both in Nova Scotia and overseas. Mr. Evans was President of the Commission in 2005-06, and resigned from the Commission in October 2006.

Diana Ginn
Commissioner (2002 -)
Ms. Ginn was appointed to the Commission in June of 2002. She is Associate Dean, Academic and an associate professor at the Faculty of Law, Dalhousie University, teaching in the areas of property law, administrative law, health law and women in the law. Ms. Ginn specializes in research and writing in these subject areas, and has published numerous articles.

Darlene Jamieson
Commissioner (2002 -)
Ms. Jamieson was appointed to the Commission by the Council of the Nova Scotia Barristers' Society in June of 2002. She has been a Partner in the law firm Merrick Jamieson Sterns Washington & Mahody since 1998 with preferred areas of practice being civil litigation, including insurance, banking, construction and employment law. She has held numerous and varied posts with the Nova Scotia Barristers' Society.

John L. McMullan
Commissioner (2006 -)
Dr. McMullan was appointed to the Commission in February 2006. Dr. McMullan is a Professor of Sociology and Criminology and the former Chairperson and Criminology Graduate Studies Coordinator at Saint Mary's University. He is the author of several books and numerous articles on business crime, law enforcement, social regulation, media, law and justice, and gambling and social policy. Dr. McMullan is a multiple research award holder and he has served on many university, academic, professional, and government councils and boards. He is currently interested in the role of public inquiries and truth, and the legal context of new forms of permitted gambling in Canada.

E. Arleen Paris
Commissioner (2002 -)
Ms. Paris was appointed to the Commission in January 2002. She is a retired medical laboratory technologist, who worked with the Nova Scotia Department of Agriculture and Fisheries, as well as at hospitals in Nova Scotia and New Brunswick. A resident of Truro, Ms. Paris is involved in a number of community activities.

Staff

John E.S. Briggs
Executive Director & General Counsel
Mr. Briggs, a graduate of Carleton, Queens and Oxford universities, was called to the Bar in 1974. He has been Executive Director of the Commission since 2001, and also acts as Outside Counsel to the Federal Minister of Justice on alleged miscarriage of justice cases. Mr. Briggs is a practicing member of the bar in Nova Scotia and Ontario, and is the President of the Federation of Law Reform Agencies of Canada.

William H. Laurence
Legal Research Counsel
Mr. Laurence joined the Commission in September, 1998. He has a B.A. (Hon.) from Carleton University, an LL.B. from McGill University as well as an LL.M. and M.L.I.S. from Dalhousie University. He worked as a legal researcher and practiced law before joining the Commission.

Krista Tinslay
Administrative Assistant
Ms. Tinslay joined the Commission in April 2006. She has an extensive background in the administrative field, with emphasis on the non-profit sector.

William H. Charles, Q.C.
Special Counsel
Professor Charles has acted as Special Counsel to the Commission since 2001. He is a graduate of Dalhousie (where he was Dean of Law 1979-1985), Concordia, Harvard and Michigan universities. Professor Charles was the first President of the Law Reform Commission, and held that position from 1991 until 1995. He serves on a number of Boards and Councils in Nova Scotia.

Appendix A.

The Law Reform Commission Act

CHAPTER 17 OF THE ACTS OF 1990

An Act to Establish an Independent Law Reform Commission

Short title

1 This Act may be cited as the *Law Reform Commission Act*. 1990, c.17, s.1.

Interpretation

2 In this Act, "Commission" means the Law Reform Commission of Nova Scotia. 1990, c.17, s.2.

Law Reform Commission of Nova Scotia

3 There is hereby established a body corporate to be known as the Law Reform Commission of Nova Scotia. 1990, c.17, s.3.

Object of Commission

4 The object of the Commission is to review the law of the Province and any matter relating to law in the Province and to make recommendations for improvement, modernization and reform including, without limiting the generality of the foregoing, recommendations for

(a) development of new approaches to, and new concepts of, law that serve the changing needs of society and of individual members of society;

(b) clarification and simplification of the law;

(c) removal of provisions of the law that are outdated;

(d) improvement of the administration of justice;

(e) review of judicial and quasi-judicial procedures. 1990, c.17, s.4.

Composition of Commission

5 (1) The Commission shall be composed of not fewer than five nor more than seven commissioners who may be appointed, either on a full-time basis or a part-time basis, as follows:

(a) two members of the Nova Scotia Barristers' Society appointed by the Council of the Society;

(b) a judge of a court of the Province, appointed by the Governor in Council after consultation with the Chief Justice of Nova Scotia and the chief judge of the court of which the judge is a member;

(c) a full-time member of the Faculty of Law of Dalhousie University appointed by the Governor in Council after consultation with the Dean of the Faculty;

(d) a person who is not a graduate in law appointed by the Governor in Council;

(e) where the Governor in Council determines that the Commission is to be composed of more than five commissioners, one or two persons appointed by the Governor in Council.

Term of office of commissioner

(2) Each commissioner holds office for a term of three years, except that one of the first commissioners appointed by the Council of the Nova Scotia Barristers' Society and one of the first commissioners appointed by the Governor in Council shall be appointed for a term of two years.

Ceasing to be a commissioner

(3) A person ceases to be a commissioner where

(a) that person fails to attend three consecutive regular meetings of the Commission, except where the Commission by resolution excuses the absences; or

(b) the composition of the Commission ceases to comply with this Act as a result of the person ceasing to be a person described in clause (a), (b), (c) or (d) of subsection (1).

Casual vacancies

(4) Where a person ceases to be a commissioner for any reason other than the expiration of that person's term of office, the Governor in Council or the Council of the Nova Scotia Barristers' Society, as the case may be, shall appoint a person for the unexpired portion of the term.

Re-appointment of commissioner

(5) A commissioner whose term of office has expired may be re-appointed.

Expiry of term of office

(6) A commissioner whose term of office expires continues to hold office until a successor is appointed.

Vacancy

(7) A vacancy in the membership of the Commission does not impair the ability of the remaining members to act. 1990, c.17, s.5.

President of Commission

6 The commissioners shall appoint one of the members of the Commission to be the President of the Commission. 1990, c.17, s.6.

Remuneration and expenses

7 The President and other members of the Commission may be paid such remuneration and shall be paid such travelling and living expenses as may be determined by the Governor in Council.

1990, c.17, s.7.

Powers of Commission

8 (1) The Commission may

(a) receive and consider any proposals for the reform of the law that may be made to it by any person;

(b) initiate, carry out and direct such studies and research as are necessary to properly carry out its object;

(c) publish papers, studies or other documents prepared by or for the Commission;

(d) co-operate or enter into agreements with any organization that undertakes projects relating to the object of the Commission within or outside the Province;

(e) with the concurrence of the Attorney General and to the extent that the Commission is able to do so without, in its opinion, impairing its ability to carry out its object or duties, provide information, research material and study results and make recommendations to departments, boards and agencies of the Government of the Province concerned with the improvement, modernization or reform of laws;

(f) regulate its proceedings and provide generally for the conduct and management of its affairs;

(g) do such things and take such measures as the Commission considers advisable for the achievement of its object, including the making of by-laws.

Duties and further powers of Commission

(2) The Commission

(a) may make use of technical and other information, advice and assistance from departments, boards and agencies of the Government of the Province;

(b) shall undertake, at the request of the Attorney General, in a manner as determined by the Commission, the examination of particular laws or branches of the law and make recommendations for their improvement, modernization and reform. 1990, c.17, s.8.

Meetings of Commission

9 The Commission shall meet at least four times in each year. 1990, c.17, s.9.

Personnel

10 (1) An Executive Director and such persons as are required for the administration of this Act and the regulations shall be appointed by the Commission, in accordance with the *Civil Service*

Act.

Function of Executive Director

(2) The Executive Director has the management, direction, control and administration of the day-to-day operations of the Commission.

Advisers

(3) Notwithstanding subsection (1), the Commission may engage, upon such terms and conditions as the Commission deems fit, the services of such professional persons, technical persons and experts to advise the Commission as the Commission deems necessary for the carrying out of its object. 1990, c.17, s.10.

Appropriation of money

11 (1) Money appropriated by the Legislature for the purpose of this Act shall be paid out by the Attorney General.

Law Reform Commission Fund

(2) The Commission shall maintain an account to be under the control and management of the Commission, to be known as the Law Reform Commission Fund, into which the Attorney General may pay from time to time any sum of money appropriated and into which may be paid any sum of money contributed as a grant or gift by any person, organization or body.

Use of money in Fund

(3) Except where a stipulation or condition is expressed in relation to a sum of money paid into the Law Reform Commission Fund, the money in the Fund may be used by the Commission for the purpose of this Act. 1990, c.17, s.11.

Annual report to Attorney General

12 (1) The Commission shall report from time to time to the Attorney General and shall make an annual report to the Attorney General on the activities of the Commission.

Tabling of annual report

(2) The Attorney General shall table the annual report of the Commission in the Assembly, if the Assembly is then sitting and, if the Assembly is not sitting, within fifteen days of its next sitting.

Other report

(3) Where the Commission reviews, considers or inquires into a matter, the Commission shall make a report to the Attorney General with respect to that matter at the conclusion of its deliberations.

Publication of report

(4) The Commission may publish a report made pursuant to this Section. 1990, c.17, s.12.

Repeal

13 Chapter 251 of the Revised Statutes, 1989, the *Law Reform Act*, is repealed. 1990, c.17,

s.13.

Proclamation

14 This Act comes into force on and not before such days as the Governor in Council orders and declares by proclamation. 1990, c.17, s.14.

Proclaimed	-	January 22, 1991
In force	-	February 1, 1991

Appendix B.

Financial Report for the 2006-2007 Fiscal Year

LAW REFORM COMMISSION OF NOVA SCOTIA
Balance Sheet as at 3/31/07

ASSETS			
CURRENT ASSETS			
Petty cash			25.00
Bank Operating Account	23,268.71		
Cashable GICs	0.00		
Total Cash			23,268.71
HST Receivable			4572.47
GST Receivable			4.71
TOTAL CURRENT ASSETS			27,870.89
FIXED ASSETS			
Computer Equipment		19,059.16	
Accum Computer Equipment		-19,059.16	
Net Office Equipment			0.00
TOTAL FIXED ASSETS			27,870.89
TOTAL ASSETS			
LIABILITIES			
CURRENT LIABILITIES			
Vacation Payable			-1965.06
UIC Payable		0.00	
CPP Payable		0.00	
Income Tax Payable		0.00	
Receiver General Payable			0.00
Accrued income			-1,965.06
TOTAL CURRENT LIABILITIES			-1,965.06
TOTAL LIABILITIES			
EQUITY			
SURPLUS			
Surplus Beginning of Year			5,242.68
Surplus Current Year			24,593.27
ACCUMULATED SURPLUS			29,835.95
TOTAL EQUITY			29,835.95
LIABILITIES AND EQUITY			27,870.89

Explanatory Note:

$24,250 in funding has been accrued to provide for project funding in 2007–08. Expenditures were budgeted, requested and received in Fiscal Year ending March 31, 2007; projects on-going. The year began with a surplus of $5,242, which at year end, after factoring in accrued project funding of $24,250, stands at $5,586.

LAW REFORM COMMISSION OF NOVA SCOTIA
Income Statement as at 3/31/07

REVENUE			
OPERATING INCOME			
Dept. of Justice Nova Scotia		164,000.00	
NS Law Foundation contribution		140,308.00	
Miscellaneous Income		3.68	
Interest income		0.00	
TOTAL CONTRIBUTIONS		304,311.68	
TOTAL REVENUE		304,311.68	
EXPENSE			
ADMINISTRATIVE EXPENSES			
Wages	190,580.72		
EI expense	2,886.62		
CPP expense	5,340.35		
Group insurance expense	7,527.31		
TOTAL PERSONNEL RELATED		206,335.00	
Advertising		0.00	
Commissioners fees & expenses		214.70	
Electrical expense		1,093.01	
Meeting costs		712.55	
Library		3,697.89	
Accounting fees		0.00	
Membership dues		4,200.40	
Computer software/supplies/repairs		1,595.45	
Internet		1,247.47	
Staff expenses		4,054.88	
Rent	26,154.60		
Office equipment rental	3,184.29		
Insurance	1,231.00		
TOTAL PREMISES RELATED		30,569.89	
Office supplies	1,390.64		
Photocopy/printing	3,889.57		
Postage & courier	2,535.35		
Telephone expense	3,237.06		
Travel/conference/workshop	7,314.26		
Office Equip Maintenance	79.95		
TOTAL OFFICE RELATED		18,446.83	
Bank charges		259.16	
Miscellaneous		0.00	
Contract Research		2,715.00	
HST paid on purchases		4,571.52	
GST paid on purchases		4.68	
TOTAL ADMINISTRATION			279.718.41
TOTAL EXPENSE			279,718.41
NET INCOME		24,593.27	

Appendix C.

List of Publications (by project) 1991-2007

Law Reform Commission Publications

(As of March 31, 2007)

Administrative Justice System

(Agencies, Boards and Commissions - ABC Report)

- *Agencies Boards and Commissions: The Administrative Justice System* (Discussion Paper, January 1996
- *Reform of the Administrative Justice System in Nova Scotia* (Final Report, January 1997)

Adult Guardianship/Advance Health Care Directives

- *Adult Guardianship in Nova Scotia* (Discussion Paper, September 1993)
- *Living Wills in Nova Scotia* (Discussion Paper, November 1994)
- *Adult Guardianship and Personal Health Care Decisions* (Final Report, November 1995)

Custody and Access

- *Grandparent-Grandchild: Access* (Discussion Paper, January 2007)

Domestic Violence

- *Violence in a Domestic Context* (Discussion Paper, March 1993)
- *From Rhetoric to Reality, Ending Domestic Violence in Nova Scotia* (Final Report, February 1995)

Enduring Powers of Attorney

- *Enduring Powers of Attorney in Nova Scotia* (Discussion Paper, June 1998)
- *Enduring Powers of Attorney in Nova Scotia* (Final Report, September 1999)

Enforcement of Maintenance Obligations

- *Enforcement of Maintenance Obligations* (Discussion Paper, July 1992)
- *Enforcement of Maintenance Obligations* (Final Report, November 1992)

Future of the Law Reform Commission

- *A Continuing Need for Law Reform: The Case for the Law Reform Commission of Nova Scotia* (Report, December 2001)

Interim Payment of Damages

- *Interim Payment of Damages* (Discussion Paper, January 2000)
- *Interim Payment of Damages* (Final Report, February 2001)

Jury System

- *Reform of the Jury System in Nova Scotia* (Discussion Paper, May 1993)
- *Reform of the Jury System in Nova Scotia* (Final Report, June 1994)

Matrimonial Property

- *Matrimonial Property in Nova Scotia: Suggestions for a New Family Law Act* (Discussion Paper, April 1996)
- *Reform of the Law Dealing with Matrimonial Property in Nova Scotia* (Final Report, March 1997)

Mechanics' Lien Act

- *Builders' Liens in Nova Scotia: Reform of the Mechanics' Lien Act* (Discussion Paper, January 2003)
- *Builders' Liens in Nova Scotia: Reform of the Mechanics' Lien Act* (Final Report, June 2003)

Mental Health Provisions

- *Mental Health Provisions of the Hospitals Act* (Discussion Paper, September 2000)
- *Mental Health Provisions of the Hospitals Act* (Final Report, February 2002)

Mortgage Foreclosure and Sale

- *Mortgage Foreclosure and Sale* (Discussion Paper, July 1997)
- *Mortgage Foreclosure and Sale* (Final Report, September 1998)

Privity of Contract

- *Privity of Contract (Third Party Rights)* (Discussion Paper, March 2004)
- *Privity of Contract (Third Party Rights)* (Final Report, August 2004)

Probate

- *Probate Reform in Nova Scotia* (Discussion Paper, March 1998)
- *Probate Reform in Nova Scotia* (Final Report, March 1999)

Status of the Child Born Outside Marriage

- *The Legal Status of the Child Born Outside of Marriage in Nova Scotia* (Discussion Paper, August 1993)
- *The Legal Status of the Child Born Outside of Marriage in Nova Scotia* (Final Report, March 1995)

Structured Settlements

- *Court-ordered Structured Settlements for Personal Injury Damage Awards* (Background Paper, August 2004)

Tortfeasors

- *Joint Tortfeasors & the Common Law "Release Bar Rule"* (Final Report, July 2002)

Vexatious Litigants

- *Vexatious Litigants* (Discussion Paper, November 2005)
- *Vexatious Litigants* (Final Report, April 2006)

Wills Act

- *Reform of the Nova Scotia Wills Act* (Discussion Paper, July 2003)
- *Reform of the Nova Scotia Wills Act* (Final Report, November 2003)

Fifteen Annual Reports

- April 1, 1991 - March 31, 1992
- April 1, 1992 - March 31, 1993
- April 1, 1993 - March 31, 1994
- April 1, 1994 - March 31, 1995
- April 1, 1995 - March 31, 1996
- April 1, 1996 - March 31, 1997
- April 1, 1997 - March 31, 1998
- April 1, 1998 - March 31, 1999
- April 1, 1999 - March 31, 2000
- April 1, 2000 - March 31, 2001
- April 1, 2001 - March 31, 2002
- April 1, 2002 - March 31, 2003
- April 1, 2003 - March 31, 2004
- April 1, 2004 - March 31, 2005
- April 1, 2005 - March 31, 2006